

ROGER STOKELY,)	CV F 01-6030 LJO WMW HC
)	
Petitioner,)	
)	
v.)	ORDER DENYING REQUEST
)	FOR CERTIFICATE OF
)	APPEALABILITY
)	
JOE McGRATH,)	
)	
Respondent.)	[Doc. 75]
)	

On November 30, Petitioner filed an application for a certificate of appealability. The controlling statute, 28 U.S.C. § 2253, provides as follows:

- (a) In a habeas corpus proceeding or a proceeding under section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.
- (b) There shall be no right of appeal from a final order in a proceeding to test the

1 validity of a warrant to remove to another district or place for commitment or trial a
2 person charged with a criminal offense against the United States, or to test the validity
of such person's detention pending removal proceedings.

3 (c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal
may not be taken to the court of appeals from--

4 (A) the final order in a habeas corpus proceeding in which the detention complained
of arises out of process issued by a State court; or

5 (B) the final order in a proceeding under section 2255.

6 (2) A certificate of appealability may issue under paragraph (1) only if the applicant
has made a substantial showing of the denial of a constitutional right.

7 (3) The certificate of appealability under paragraph (1) shall indicate which specific
issue or issues satisfy the showing required by paragraph (2).

8 In the present case, the court finds that Petitioner has failed to carry his burden of
9 making a substantial showing of the denial of a constitutional right. Accordingly, Petitioner's
10 request for a certificate of appealability is HEREBY DENIED.

11 IT IS SO ORDERED.

12 **Dated: December 3, 2007**

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE